

100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-162/2001 ordered dated Pg. 1 to 3
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 JYOTIRAGNI BENCH, JYOTIRAGNI, 5 (FORM NO. 4)
 ORDER SHEET. (See Rule-42)

APPLICATION NO. 329/2000

Applicant(s)

Bimalendu Gupta

Respondents(s)

✓ vs Union of India & Ors.

Advocate for Applicant(s)

Mr. G. Sarma

Advocate for Respondent(s) Mr. C.G.S.C.

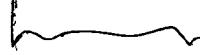
Notes of the Registry

DATE

ORDER OF THE TRIBUNAL

29.9.2000 Present: Hon'ble Mr Justice D.N. Chowdhury,
 Vice-Chairman

Mr G. Sarma, learned counsel for the
 applicant and Mr A. Deb Roy, learned Sr. C.G.S.C.,
 are present. Let the case be listed on 17.10.00
 for consideration of admission.


 Vice-Chairman

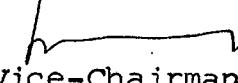
nkm

26
21/10/2000

17.10.00

Heard Mr A. Deb Roy, learned Sr. C.G.S.C.
 for the respondents. Issue notice to show
 cause as to why this application shall not
 be admitted.

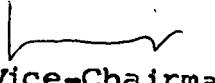
List on 17.11.2000 for show cause and
 admission.


 Vice-Chairman

pg

17.11.00

On the prayer made on behalf of Mr G.
 Sarma, learned counsel for the applicant
 the case is adjourned to 27.11.00 for
 admission.


 Vice-Chairman

pg

Respondent No. 1, 2, 35 by
 Regd A/I.D. Vide P.R No-2902
 902, 29/04/00 and P.No.
 6, 87 by Hand through Pemba
 ID is awaited.

16/11/00

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(2)

O.A. No. 329/2000

16-11-2000

① Service report are still awaited.

② No. Show cause has been filed.

26/11/00

27.11.2000

None appears on behalf of applicant. List it again on 1.1.2001 for admission.

[Signature]
Vice-Chairman

nkm

Abdul
27/11

1.1.2001

None appears for the applicant. Mr. B.C. Pathak, learned Addl. Central Govt Standing Counsel for the respondents submits that this matter is analogous to O.A. 149/2000 and O.A. 369/2000 and may be taken up along with this application.

List this application along with connected cases on 19.1.2001 for admission.

[Signature]
Vice-Chairman

Notice and served on Respondent No 184. Others are awaited
24/11/00

mk

19-1

No S.B. Adjourned to 24.1.2001.
Abdul
19-1

24.1.01

List it again on 14.2.2001 for further orders.

[Signature]
Vice-Chairman

No written statement has been filed.

trd

14.2.01

There is no representation. List on 7.3.01 for filing of written statement.

[Signature]
Vice-Chairman

lm

Notes of the Registry	Date	Order of the Tribunal
No. written statement has been filed.	7.3.01	List on 21.3.01 alongwith other connected cases. In the meantime the respondents may file written statement.
<i>By 20.3.01</i>	1m	<i>Vice-Chairman</i>
No. written statement has been filed.	21.3.01	List on 28.3.01 alongwith O.A. No.369 of 2000(M.P.57 of 2000) for hearing.
<i>By 27.3.01</i>	1m	<i>I C (Usha Member</i>
	28.3	List tomorrow alongwith OA 369/2000, O.P.57/2000 & OA 149/2000. <i>Ms. A.R.J. 28.3</i>
<u>3.4.2001</u>	29.3.01	Mr. B.C. Pathak, learned Addl.C.G.S.C. prays for adjournment on the ground that the order in O.A. No.298 of 99 is awaited. List on 4.4.01 for hearing.
<i>W/S has been submitted by Mr. H.K. Das</i>	1m	<i>I C (Usha Member</i>
<i>Respondent.</i>	4.4.2001	None appears for the applicant. List again on 25.4.01 for hearing.
<i>H.K.D.</i>	nkm	<i>Vice-Chairman</i>
	25.4.01	Mr. H.K.Das, appearing on behalf of Mrs. B.Dutta, Advocate, Govt. of Meghalaya, and Mr. G.Sarma, prays for one month time to file rejoinder to the written statement. Prayer allowed. List on 1.6.2001 for hearing.
	trd	<i>Vice-Chairman</i>

(4)

Notes of the Registry	Date	Order of the Tribunal
Written statement has been filed.	1.6.2001	None appears for pressing the application. The case is adjourned to 13-6-2001 for hearing.
<i>26 12.6.01</i>	bb 13.6.01	By Order The matter was called for hearing. After 3 calls given none appears for the applicant. It is seen that on 4.4.01, 26.4.01 and 1.6.01 there is no representation on behalf of the applicant. It appears that the applicant is not interested in pursuing this application. Application is dismissed for default.
<i>hand application B.P.M. 22/6</i>	lm 21.11.01	I.C.Ushan Member In view of the order passed in M.P.No. 162 of 2001 this case is restored to file. List the case for hearing on 5.12.2001 alongwith O.A.149/2000, 369/2000 and M.P.57/2000.
<i>21.6.2001 copy of the order has been sent to the D.P.C. for issuing the sum to the Addl.C.G.S.C. for the Respnd.</i> <i>itd</i>	bb 5.12.2001	I.C.Ushan Member List the case for hearing on 2.1.2002 alongwith O.A.149/2000, 369/2000.
	bb 2.1.02	I.C.Ushan Member (A) Mr. A. Deb Roy, Sr. C.G.S.C. prays for adjournment on behalf of Mr. B.C. Pathak, Addl.C.G.S.C. on the ground of his absence today. Prayer is allowed. List on 25.1.02 for hearing.
	lm	I.C.Ushan Member

25.1.2002

Heard Mr H.K. Das, learned counsel for the applicant as well as Mr B.C. Pathak, learned Addl. C.G.S.C. Hearing concluded. Judgment reserved.

IC (Ushan)

Member

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8.2.02

Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No costs.

IC (Ushan)

Member

copy of the Judgment
handed over to the
applicant as well as to
the Govt Adv for its
respon.
SC

22.2.2002

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Applications No. 149 of 2000,
329 of 2000,
369 of 2000 and
479 of 2001.

Date of Order : This the 8th Day of February, 2002

The Hon'ble Mr K.K.Sharma, Administrative Member.

Sri Bimalendu Gupta
Senior Accountant,
Office of the Accountant General(A&E)
Assam, Beltola,
Guwahati-29.

... Applicant.

By Advocate Sri G.Sarkar (O.A.149/2000, 329/2000)
Sri H.K.Das (O.A. 369/2000)
Applicant appeared in person in 479/2001.

- Versus -

Union of India & Ors. Respondents.

By Advocate Sri B.C.Pathak, Addl.C.G.S.C.

O R D E R

K.K.SHARMA, ADMN. MEMBER,

All these applications filed by the applicant are taken up together as the issues raised in these applications are common and mainly pertain to the reimbursement of air travel expenses for the treatment of the applicant's wife and also reimbursement of medical expenses. The applicant's case has been argued by Mr H.K.Das, learned counsel for the applicant and the applicant also elaborated the arguments in person.

2. The facts relevant for the purpose of disposal of these applications are that the applicant's wife is a State Government employee. The applicant's wife gave a declaration dated 10.7.90 to claim the medical reimbursement facilities under CCSMA Rules, as applicable to the applicant for her treatment and stated therein that she

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would not avail of medical allowance facilities from the Government of Assam. The applicant's wife is suffering from different ailments. As per recommendation of the treating physician of GMCH the applicant's wife was treated in All India Institute of Medical Sciences, New Delhi. The applicant's wife was being treated by physician of GMCH Dr Robin Medhi who advised that she should be treated at Apolo Hospital, Chennai. She was treated at Apolo Hospital Chennai from 2.2.98 to 9.2.98 and from 19.9.99 to 29.9.99. While she was under treatment at Apolo Hospital, an amount of Rs.30,000/- was sanctioned by the respondent No.3 which was not sufficient for the treatment and a fax message dated 24.9.99 was sent by G.M.Finance, Apolo Hospital to the respondent No.3. It is stated that review treatment of the applicant's wife was approved by the Joint Director, CGHS vide his letter dated 14.9.99 and air travel for 2 escorts was also approved. The applicant's wife was released from Apolo Hospital on 29.9.99. The respondents refused to provide medical treatment at Apolo Hospital. The applicant had to file an application before the Central Administrative Tribunal being O.A. 149/2000 and vide interim order dated 5.5.2000 the respondents were directed to release the funds to enable the applicant to travel by air for review treatment. It is stated that the Director General of Health Services by order dated 25.7.2000 conveyed approval of the Government for air travel of the applicant and his wife from Guwahati to Chennai. The applicant's wife received review treatment at Apolo Hospital, Chennai from 23.5.2000 to 6.6.2000. The respondent No.3 had

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sanctioned Rs.30,000/- as medical advance and Rs.32,324/- as air fare. The attending physician Dr D.S. Das and Dr R. Sridharan of Apollo Hospital Chennai advised on 31.5.2000, 1.6.2000 and 7.6.2000 to take the patient for second opinion and treatment and also gave air travel certificate. The applicant and his wife were travelled by air to Delhi and the treatment continued from 8.6.2000 to 12.6.2000. The patient was advised to report after 3 months for review. The approval for travel to Chennai to Delhi and back is still awaited. After treatment at Delhi the applicant submitted the claim for medical advance and air fare for review treatment. The respondents did not allow the claim and the applicant moved another application being O.A.369/2000 on 31.10.2000. By interim order dated 31.10.2000 the respondents were directed to sanction T.A advance and also directed to not recover Rs.19,742/-. The medical advance of Rs.48,000/- was sent to Indraprastha Apollo Hospital, Delhi by bank draft on 16.9.2000. The applicant's wife received necessary treatment from 7.11.2000 to 13.11.2000 and the treating physician Dr R.C. Arora advised the patient on 13.11.2000 to report after 3 months for review treatment. The applicant again applied for advance for review treatment which was due on 13.2.2001. The applicant sent reminders dated 15.3.2001 and 3.9.2001 alongwith the advice of Apollo Hospital Delhi. The respondents have not acted on the applicant's request. Finding no other alternative the applicant's wife moved a Writ Petition being numbered as W.P.(C) 3660/2001 on 24.5.2001 before the Gauhati High Court and the High Court was pleased to grant interim order with a direction to the

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respondents to sanction necessary advance within a week from the date of receipt of the order. The respondents filed a Misc. Case No. 816/2001 before the High Court stating therein that the applicant ~~had~~ had already filed series of applications before the Central Administrative Tribunal ^{on this matter} Because of the misrepresentation before the High Court the interim order dated 24.5.2001 was vacated. The respondent No.3 directed the applicant to approach the Joint Director, CGHS, Guwahati to obtain essentiality certificate for travel by air. Accordingly the applicant approached the Joint Director, CGHS by fax on 27.4.2001 requesting him to examine the patient at her residence. Finding no response to the application dated 3.9.2001 the applicant submitted certificates from Dr Dilip Kr. Ghosal, DHMS dated 30.8.2001 and Dr J.K. Baruah, RMP dated 28.8.2001 who recommended that the patient should travel by air alongwith the attendant doctor. The applicant submitted that the advice of Homoeo practitioner was legally valid and the same should be accepted by the respondents. The respondents by order dated 25.4.2001 (Annexure-Y to O.A.479/2001) had started recovery at the rate of Rs.2500/- per month. The action of the respondents has been challenged on numerous grounds. It is stated that the applicant has a legitimate right for treatment. The impugned orders not sanctioning the claim of the applicant on the ground of not producing essentiality certificate is contrary to the provisions of law and that the respondents have abused their powers in not providing the applicant of legitimate right of medical treatment. The arguments advanced on behalf of the applicant are :

- (i) That certificate from RMP and Homoeo practitioner

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are acceptable. For this purpose reference was made to circulars dated 15.6.2001 and 17.8.2001. However on perusal to these circulars it is revealed that these pertain to sanction of leave and also related to the Non-Gazetted employees. Certificates issued by recognised medical practitioners may be accepted for sanctioning medical leave.

(ii) If the respondents are not competent to sanction the claim of the applicant the same may be referred to the Government.

(iii) The applicant has a fundamental right to be treated by any medical attendant.

2. The respondents have filed written statement. It is stated that on 15.9.99 the applicant was sanctioned Rs. 32000/- as medical advance and not Rs.30,000/- as mentioned by the applicant. The advance was sanctioned on the basis of an estimate of Dr R.Medhi, Assistant Professor, O & G, Gauhati Medical College, Hospital. A bank draft of Rs.32000/- was sent to Medical Superintendent, Apollo Hospital, Chennai and it was stated in the forwarding letter that a certificate should be given whether the patient can travel by rail or air and that the certificate was absolutely necessary.

By fax dated 24.9.99 the Apollo Hospital informed the Accountant General (A&E), Assam that an additional amount of Rs.30000/- was required for continuing the treatment.

Accordingly another bank draft of Rs.24,000/- being 80% of the estimate was sanctioned. However the said draft was held up on account of telephonic message from the applicant. The Hospital authorities ^{Wife US} are also asked to verify the facts and however no message was received from the Hospital. Meanwhile the applicant's wife was released from Hospital with advice to report back after 3 months.

In no documents it has been stated by Hospital authorities that the treatment of the applicant's wife was suspended

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due to non receipt of additional amount of Rs.30,000/-.

The respondents have filed Annexure-7 being advice dated 28.9.99 of the Consultant, Apollo Hospital. With regard to the representation dated 16.12.99 for follow up treatment, The applicant did not submit any fresh estimate for medical advance and essentiality certificate for air travel neither from Apollo Hospital nor from treating physician of GMCH. As the applicant is an employee covered by CGHS facilities he is ~~should~~ required to take permission for air travel in terms of O.M. dated 7.4.99. The applicant was asked to submit estimate for medical advance and essentiality certificate to the effect that air travel was absolutely necessary. This was done by a letter dated 23.12.99 (Annexure-9). The applicant submitted an advice slip from Apollo Hospital (Annexure-10) which mentioned as "medically fit to travel by air". This was not treated as an essentiality certificate. The applicant did not obtain the approval of CGHS. The wife of the applicant ^{had} ~~all~~ along being treated as an outdoor patient. The patient undergoing OPD treatment is required to procure medicine from CGHS Dispensary. The applicant and his wife are not entitled to travel by air as per their entitlements. For air travel special approval of Government of India, Ministry of Health and Family Welfare is required. The applicant does not fulfil the essential requirements. When a reference was made to the Joint Director, CGHS the Joint Director, CGHS by his letter dated 21.1.2000 replied as under :

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In the present context the certificate as given by Dr Medhi of GMCH that the patient is ~~medically~~ fit to travel by air and that two escorts are required for the patient is not sufficient. The referring doctor has to state that the patients present condition is not such that she can travel

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by any other means of transport and air travel is absolutely essential in her case and also that two escorts are essential. Without the "absolute necessity" clause in the doctors advise slip the case for approval of air travel cannot be recommended to the Director CGHS for obtaining permission from the Ministry. Your office may therefore request Dr.R. Medhi to incorporate this in his advise slip - which we shall need to forward to the Ministry while recommending the case

The respondents also accordingly made reference to the treating physician Dr R.Medhi, who by his letter dated 24.2.2000 replied as under :-

With reference to your above mentioned letter I would like to say that air travel to Chennai is not absolutely necessary for Mrs Ajanta Gupta for her Gynaecological problems.

However, Mrs Gupta is having Neurological, Orthopaedic and Haematological problems and she is under treatment of Apollo Hospital, Chennai.

As I am not an expert in these fields of medicines, it is not possible for me to give an opinion regarding absolute necessity for air travel for her other diseases. Opinion may kindly be taken from Apollo Hospital, Chennai where she is treated."

The applicant had also produced a certificate dated 21.4.2000 from Dr R.N.Pathak who had recommended shifting of applicant's wife to Apollo Hospital, Chennai. The said advice was not certified by competent authority. The necessary experts for treatment of applicant's wife was not available at Guwahati or nearby places like Calcutta. It is stated that this certificate was not filed by the applicant before the respondents. On the representation dated 26.4.2000 the applicant was asked to furnish tentative date of outward journey for follow up treatment so that the T.A advance by admissible railway class could be drawn. As per rules the applicant is supposed to obtain certificate from CGHS or the treating doctor of GMCH to permit air travel. By

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a letter dated 28.4.2000 the applicant was informed about the reasons why air travel could not be sanctioned. On the basis of interim order dated 5.5.2000 in O.A.149/2000 an advance of Rs. 30,000/- was paid to Apollo Hospital through Bank draft for follow up treatment and Rs.33,324/- was paid to the applicant for air travel from Guwahati to Chennai and back. The above amount was sanctioned subject to the condition that in case the applicant was not able to satisfy the admissibility as per rules he would have to refund the amount with interest. Regarding the applicant's claim of examination by Dr Dilip Ghosal on 19.5.2000 it is stated that Dr Ghosal is a Homoeo doctor and as per his certificate he found the patient in a serious condition on the night of 28.4.2000 and advised to consult with the doctor of Apollo Hospital and to avoid long journey. The doctor found the patient in a serious condition on 28.4.2000 and the applicant intimated on 9.5.2000 that ~~he~~ the patient was in a serious condition. If the patient was in a serious condition she should have been hospitalised but no such thing happened. It is stated that the applicant was more interested in getting air travel and less concerned about the ailment of his wife. Moreover, if the patient was in a serious condition nobody ^{would} ~~go~~ to a Homoeopath. The illness of the applicant's wife is a fabricated one and not based on facts. The certificate of Dr Ghosal cannot be treated as an essential certificate for grant of air fare. The treatment of the applicant's wife was over at Apollo Hospital on 31.5.2000. She was prescribed medicines on 31.5.2000 and 1.6.2000. However, there was no reference on those dates for referring the case to Indraprastha Apollo Hospital, Delhi. On 2.6.2000 the applicant sent a fax to the respondent No.3 in connection with treatment at

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Indraprastha Apollo Hospital, New Delhi. The patient was referred to Apollo Hospital on 7.6.2000 with the advice that she is fit to travel by air. The applicant produced a letter dated 6.6.2000 of the treating physician of Apollo Hospital, Delhi where nothing is mentioned about second medical opinion or air travel. The advice that she is fit to travel by air does not meet the essentiality criteria of air travel. Dr Mukul Verma of Indraprastha Apollo Hospital, New Delhi treated the applicant's wife from 8.6.2000 to 12.6.2000. He advised the patient to avoid long journey, travel by air (Annexure-N to the written statement of O.A.479/2001). This also does not meet the essentiality criteria as prescribed by Ministry of Health and Family Welfare O.M. dated 7.4.99. The certificates given by doctors are in ambiguous term. It is stated that the applicant was not authorised to collect unutilized amount of Rs.25,178/- out of medical advance of Rs.30,000/- for Apollo Hospital to meet his air travel expenses from Chennai to New Delhi and New Delhi to Guwahati. The applicant was required to refund the balance amount of Rs.19,472/- out of refund of Rs.25,178/- after adjusting Rs.5456/- as medical expenses at Indraprastha Apollo Hospital, New Delhi. The certificate dated 7.6.2000 of treating physician of Apollo Hospital, Chennai did not mention that the condition of the patient was deteriorating and she was in need of shifting to Indraprastha Apollo Hospital, New Delhi and she could not be treated at Chennai. The wife of the applicant had never been an indoor patient while at Chennai or Apollo, New Delhi. Had the condition of the patient been serious she would have been hospitalised. Thus the statement of deteriorating condition of the patient was a hoax to justify the grant of air travel

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advance. In the written statement it is stated that the applicant's bills should be examined and paid as per law and rules as admissible. The applicant has failed to follow the rules and had not complied with the requirements of the rules. It was also pointed out that sanction for air travel issued by Ministry of Health and Family Welfare dated 25.7.2000 was revised by a letter dated 28.9.2000 as under :

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- (i) Payment of amount of air travel to Shri Gupta to and fro Guwahati-Chennai only as per the Hon'ble CAT's Order instead of Guwahati-Chennai New Delhi-Guwahati.
- (ii) Submission of specific certification of the treating physician of Apollo Hospital,Chennai to the effect that the "air travel for the patient is absolutely necessary."

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3. The matter has been extensively heard and as mentioned above the learned counsel for the applicant as well as the applicant in person argued the case. The case was argued mainly on facts. Mr B.C.Pathak, learned Addl. C.G.S.C supporting the written statement specifically referred to the rules. He referred to CGHS rules and O.M. No.S-12012/4/97-CGHS(P) dated 7.4.99. He admitted that air travel is permitted in respect of non eligible persons and such permission is given by Ministry of Health and Family Welfare on the basis of recommendation of Director,CGHS. He also admitted that ex post facto approval can also be given. According to the learned Addl.C.G.S.C the applicant had misrepresented the facts before the Tribunal as well as the applicant's wife also misrepresented the facts in the Writ Petition filed before the High Court. While getting the interim order dated 5.5.2000 it had been stated on behalf of the applicant that the applicant's wife was

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in very serious condition and that in the absence of treatment she was in danger of her life. In the writ Petition filed before the High Court the applicant's wife had suppressed the fact that similar issue was pending before the Central Administrative Tribunal by way of numerous applications. He further argued that the respondents have no objection in making the payment for legitimate claims of the applicant subject to the observation of the relevant rules. The applicant has deliberately not complied with the rules and the applicant's case deserves to be dismissed. Medical benefits are provided to Central Government employees as per Medical Attendance Rules as applicable. Rules are statutory in nature and are made to overrule arbitrariness and ambiguity. When rules are there rights and responsibilities of persons to whom rules are applicable are known. The exercise of discretionary power is reduced to a great extent when rules are framed. In the context of medical benefits, due to the existence of rules one knows it as to what facilities/benefits one is likely to get. The rules also provide for certain requirements which are to be observed by the beneficiaries to claim those benefits. There is no dispute that the applicant is a CGHS beneficiary. In a place where CGHS scheme is applicable, no option is given to the employee to opt out of the scheme. The applicant's wife had given an undertaking to claim the medical benefits as per Central Government rules applicable to the applicant. Having perused the record and having heard the counsel for the parties at length as well as the applicant there is no doubt in my mind that the nature of the treatment of the wife of the applicant was domiciliary. There was no

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case of any emergency. The patient required consultation and not hospitalisation. The record also shows that the patient had ~~been~~ given only consultation. The patient's life was not at stake. The rules provided for dealing with such cases as well as cases requiring emergency treatment. Chapter 6 of the Compilation of CGHS Orders and Case Laws deals with the procedure for referral cases 'to recognised hospital'.

The applicant's wife was referred to Apollo Hospital, Chennai. It is a case of referral treatment. Relevant portion of Chapter VI Para 2 (i), (v) and (vi) and para 4 are reproduced below :

"2 (i) In case of SERVING GOVERNMENT SERVANTS, after the Specialist advises a procedure in writing, the permission letter for, taking such treatment in a CGHS recognised private hospital/referral hospital of choice in the same city, would be given by the parent department/Office of the employee.

(v) In case the beneficiary, inspite of the facility being available in the another city, permission may be given, but in such cases TA/DA would have to be borne by the beneficiary himself/herself.

(vi) For availing treatment outside the city of residence of a beneficiary, the permission of Director/Addl. Directors/Joint Director of the City would have to be obtained.

4. In case of beneficiary, inspite of facility being available in the city still chooses to get treatment in CGHS recognised Hospital in another city.

The power for grant of such permission are delegated to the Heads of CGHS covered cities both in respect of pensioners and serving employees, but without grant of TA/DA."

As per applicable TA rules the applicant is entitled to travel by train and not entitled to travel by air. However, air travel for medical purposes is admissible as per Chapter VI of the Compilation of CGHS Orders. The relevant part of the rule is reproduced below :

"Air Travel - Permission may be given by the Ministry of Health and Family Welfare on the basis of the recommendation of Director, CGHS."

11/18/2023

Even there is a provision for ex-post-facto approval. Under normal T.A. Rules air travel is admissible to employees drawing a basic pay of more than Rs. 16,400/- per month. Admittedly the applicant is drawing less than Rs. 16,400/- per month. Special provision is made for non entitled persons. The relevant instruction is re-produced below :-

"Government may consider refund of air fare paid in individual cases on merits, provided they are satisfied that air travel was absolutely essential and that travel by any other means, i.e. by rail or road, etc. would have definitely endangered the life of the patient or involved a risk of serious aggravation of his/her conditions."

"Certificate required to claim T.A."

it is certified in writing by the authorised medical attendant or by the specialist to whom the patient was referred by the authorised medical attendant or by a competent medical officer attached to the hospital to which the patient was referred by the authorised medical attendant for medical attendance and treatment, that the journey was unavoidably necessary to obtain appropriate medical attendance and treatment under the relevant Medical Attendance Rules and Orders."

Under the relevant medical attendance rules simultaneous treatment in two or more systems of medicine is not permitted. The relevant rule is re-produced below :

"Instances have come to notice where persons covered under the CS(MA) Rules, have received treatment simultaneously in more than one system of medicine. It has been decided that treatment for the same ailment should not be taken simultaneously in more than one system of medicine under the CS(MA) Rules, 1944. There is, however, no objection to treatment being received simultaneously in different systems of medicine for different ailments. If however, such treatment is being taken for other diseases, this should be done with the knowledge of the attending doctors of the other systems concerned."

There is a provision for advance T.A. also. The advance T.A. rules is reproduced below :

"Advance of travelling allowance to the extent admissible under these orders may be granted to Government servants at the discretion of the authority competent to sanction advance of T.A.

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on tour on production of a certificate in writing from the medical authorities mentioned in these orders to the effect that the Government servant or a member of his/her family has been advised medical attendance and treatment outside the station (name of the station at which the patient has been recommended medical attendance and treatment to be specified) in accordance with the relevant Medical Attendance Rules and orders."

Appendix X of Medical R Attendance Rules gives instructions for Government servant. Para 5 of the relevant instruction is reproduced below :

"At the time of leaving the hospital after treatment, please get the hospital bill and receipts, vouchers, essentiality certificate, etc., duly signed or countersigned by the authorised medical attendant or the medical officer in charge of the patient in the hospital, as the case may be, for the purpose of claiming refund of expenses incurred."

Appendix XIV gives the form of essentiality certificate to be produced for claiming reimbursement. Certificate B is applicable in case of patients who are not admitted to Hospital. The rules have been reproduced above to have a better understanding of the issue. The relevant rules shows that essentiality certificate by the authorised medical attendant is necessary. The "authorised medical attendant" has been defined in the rules and means a Medical Officer under the employee of Central Government. Thus it includes CGHS Doctors. Similarly, the travel by other than the entitled mode of transport, essentiality certificate is required to the extent that it was absolutely necessary for the patient to travel by other than the entitled class. The certificates produced by the applicant do not show that the travel by air was essential. The doctors have simply certified that the patient is fit to travel by air. The type of certificates produced by the applicant do not meet the requirement of the rules applicable to the applicant.

11 UShew

Contd.. 15

No infirmity can be found in the order of the respondents in not accepting the certificates regarding air travel produced by the applicant. The applicant has not been able to satisfy me in the proceeding before me that the travel of my the patient by air was essential and that she could not be travelled by the entitled mode of transport as per her entitlement.

4. I have given a patient hearing to the submissions made by the applicant and on his behalf. The applicant filed O.A.149/2000 on 25.4.2000. On 5.5.2000 the applicant prayed for an interim order. It was submitted at that time that there was an emergency and the life of the applicant's wife was in danger. On consideration of the submission of the applicant, the respondents were directed to give an advance of Rs. 30,000/-. It was made clear in the interim order dated 5.5.2000 that if the applicant was not able to satisfy the claim under the rules he would refund the money with interest at the rate of 12%. He was also not permitted to spend the unutilized amount. The discussion above shows that the applicant had misrepresented the facts for obtaining the interim order dated 5.5.2000. Not only that the applicant's wife also misrepresented the facts in the Writ Petition filed before the Hon'ble Gauhati High Court on 24.5.2001 and also obtained interim order. However, on 25.5.2001/when the correct facts were pointed out before the Hon'ble Gauhati High Court, the interim order was vacated. The respondents have been intimated the applicant the requirement of relevant rules by letter dated 23.12.99 (Annexure-9 to the written statement in O.A.149/2000). The applicant was informed about the requirement of the relevant rules. The letter is reproduced below for convenience :

"With reference to his representation dated 16.12.99 (received on 20.12.99), Sri Bimalendu Gupta, Sr. Actt., is hereby asked to submit immediately a fresh estimate of Apollo Hospital, Chennai, required for the

V. V. Shai

contd..16

72

purpose of sanctioning of medical advance regarding follow up treatment of his wife Smt Ajanta Gupta.

As regards grant of TA for undertaking journey by air for the aforesaid purpose, it may be stated that it would not be possible to release the air travel advance without the specific certification of the treating physician of Apollo Hospital, Chennai to the effect that "Air Travel for the patient is absolutely necessary". The certificate referred to in your representation that the patient is "medically fit to travel by air", is only a certificate of fitness and cannot be treated a certificate of essentiality. Moreover, the approval of the Director, CGHS is also required for the said purpose.

In view of the above, he is asked to submit a fresh TA advance application for entitled Railway class for the proposed journey within 2(two) days from the date of receipt of this letter, for grant of TA advance. Further, in this connection, it may be mentioned that considering the gravity of the case and on the basis of Medical Certificate of the treating physician of GMCH, Air fare was granted provisionally subject to the approval of the competent authority. However, the matter has been taken up with the Joint Director, CGHS who in his letter dated 22.11.99 stated that the Air fare for the journey undertaken on the earlier occasion may not be reimbursed if the approval for the same is not received from the Director, CGHS New Delhi. As such his above mentioned air fare claim cannot be reimbursed until the receipt of the approval of the Director CGHS, New Delhi.

The release of Medical Advance of Rs.30000/- on an earlier occasion related to a different instance and cannot be automatically treated as having a bearing with the present proposal."

Again by letter dated 21.1.2000 of Joint Director, CGHS addressed to Senior Accounts Officer, office of the Accountant General the relevant rules were clarified to the applicant.

The letter is reproduced above. The applicant produced a certificate issued by Dr Ghosal dated 19.5.2000 (Annexure-20 to O.A.149/2000). The recommendation of Dr D.Ghosal is reproduced below :

"This is to certify that Mrs Ajanta Gupta W/o Mr B.Gupta was serious on 28th April, 2000 and on call at 10 P.M. attend at her residence.

IC (Usha)

After examine she was advise to consult the Apollo doctors from whom she was taking treatment and also advised to avoid train journey which may fatal her life."

It may be noted that Dr Ghosal is a homoeo path. The certificate shows that he had examined the patient on 28.4.2000 at 10 P.M. and issued a certificate on 19.5.2000 that she should avoid train journey. The certificate given by Dr Ghosal is vague. It does not mention the nature of illness. It does not explain if he found the condition of the patient serious on 28.4.2000 why he recommended treatment at Apollo hospital on 19.5.2000. The discussion above shows that the attitude of the applicant was not cooperative. He wants to get benefit outside the rules. He does not want to follow the rules. During the course of proceeding the applicant filed a copy of letter dated 27.4.2001 addressed by him to the Accountant General. The letter is reproduced below :

"With reference to your i/c DAG(A) Memo No. Admn-II/BG-MDL/Pt.II/ 2001-2002/18 dated 20.4.2001 on the subject, I am to state that as per C&AG's letter you have made compulsory CGHS treatment and deducting contribution and funding to CGHS Guwahati without my consent. Hence it is your duty and responsibility to get any information in regard to treatment as required from CGHS directly. It is further stated that in many occasions it is noticed that Shri R.I.Sen Gupta Welfare Officer initiate to do the needful, which is covered under duty and responsibility of the Welfare Officer, but in my case he is not acted accordingly. Kindly do the needful in this regard, to provide or depute specialist doctor of CGHS related to illness "Osteoporosis" and your required certification, without any lapse.

In regard to CAT order dated 29.3. 2001 of O.A.No.298/1999 and 177/1998, the decision will be intimated to you."

I C Usha

28
A reading of this letter shows the non cooperative nature of the applicant. He was writing to the Accountant General to get the information regarding treatment from CGHS directly. The applicant has requested the Accountant General to depute a specialist doctor of CGHS to examine his wife.

such
The reasons for writing/letter addressed to Accountant General were known to the applicant himself. The applicant wants reimbursement of medical expenses incurred by him. The rules required reference to CGHS. It is open to the applicant to follow the procedure or not. It is not understood how the Accountant General will arrange for examination of applicant's wife by CGHS specialist. Instead of approaching the CGHS authorities the applicant has addressed this letter to the Accountant General. A copy of this letter had also been endorsed to Joint Director, CGHS. The applicant has also requested the Joint Director, CGHS to depute a CGHS doctor to his residence. It is not understood as to how/the applicant can take his wife to hospital in Chennai/Delhi, ~~he~~ was not in a position to take her to the CGHS Dispensary. The applicant has not been able to support his case for relief under the rules. No infirmity/^{is}found in the orders issued by the respondents regarding the applicant's claim for re-imbursement. The respondents are directed to dispose of the applicant's claim for medical reimbursement as per rules.

As discussed above the applicant has not been able to satisfy in this proceeding why applicant's wife was entitled to travel by/other than the entitled class. The applicant has not obtained necessary authorisation from competent authority. I am unable to give any relief to the applicant. The application is disposed of as above. The claim of the applicant will be settled as per applicable rules. All ^{to} interim orders contradictory/this order stand vacated.

10/11/2014
V. C. Usha

contd..19

(1) required (1)
The applicant will be entitled to refund the inadmissible amount with interest at the rate of 12%.

All the above applications are disposed of as above. There shall however be no order as to costs,

Sd/ MEMBER (ADMIN)

५८

केन्द्रीय प्रशासनीय न्यायालय
Central Administrative Tribunal
३०००
२९ SEP 2000
६२९
गुवाहाटी न्यायालय
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Administrative
 Tribunal's Act, 1985)

O.A. No. ३२९ /2000

Shri Bimalendu Gupta ... Applicant.

-Versus-

Union of India and others ... Respondents.

I N D E X

Sl. No.	<u>Annexure</u>	<u>Particulars of the documents</u>	<u>Page No.</u>
1.		Application	1 to 8
2.		Verification	9
3.	Annexure-A1	Annexure-A1	10
4.	Annexure-A2		11
5.	Annexure-A3		12
6.	Annexure-A4		13
7.	Annexure-A5		16

For use in Tribunal's office

Date of filing :

Registration No. :

Registrar.

B. K. Saikia,
 29-9-2000

27
Bimalendu
Gupta
father

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O.A. No. 2000

Shri Bimalendu Gupta ... Applicant.

-Versus-

Union of India & Ors. ... Respondents.

PARTICULARS OF THE APPLICANT

i) Name of the applicant : Sri Bimalendu Gupta

ii) Name of father : Late Biswanath Gupta

iii) Designation & office : Senior Accountant
in which employed
O/o the A.G.(A&E)
Assam,
Beltola, Moidamgaon,
Guwahati-781029.

iv) Office address : O/o the A.G.(A&E)
Assam,
Beltola, Moidamgaon,
Guwahati-781029.

v) Address for service notice : Office of the AG(A&E),
Assam,
Beltola, Moidamgaon,
Guwahati-781029.

Contd.....

PARTICULARS OF THE RESPONDENTS

1. Union of India represented by the Secretary to the Govt. of India, Ministry of Health & Family Welfare, (Department of Health), Nirman Bhawan, New Delhi.
2. Union of India represented by the Comptroller of Auditor General of India Bahadur Shah Zaffar Marg, Indraprastha Head Post Office, Post Box No.7, New Delhi-2.
3. Comptroller of Auditor General of India Bahadur Shah Zaffar Marg, Indraprastha Head Post Office, Post Box No.7, New Delhi-2.
4. Accountant General (A&E) Assam, Maidamgaon, Beltola, Guwahati-29.
5. Addl. Deputy Director General (HQ), Directorate General of Health Services Nirman Bhawan, New Delhi.
6. Deputy Accountant General (Admn) O/o the AG (A&E), Assam, Maidamgaon, Beltola, Guwahati-29.
7. Joint Director, Central Govt. Health Scheme, Ministry of Health & Family Welfare, Ananda Kutir Path, Zoo Tiniali, Guwahati-3.

DETAILS OF APPLICATION

I. PARTICULARS OF THE ORDER/ORDERS AGAINST WHICH THE APPLICATION IS MADE

This application is made against orders dated 22.9.2000 & vide memo No. Admn-II/BG-MDL/2000-01/505 and that of dated 26.9.2000 vide Memo No. Admn II/BG-MDL/PT.II/2000-2001/529 issued by Shri L. Sidhartha Singh, Dy Accountant General (Admn), respondent No. 6 refusing to sanction air travel advance.

Contd.....

Bimalendu Nath

1. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the instant application is within the jurisdiction of this Hon'ble Tribunal.

2. LIMITATION :

The applicant declares that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunal's Act, 1985.

3. FACTS OF THE CASE :

1. That your humble applicant is a citizen of India and as such he is entitled to all the rights and privileges guaranteed in the Constitution of India and presently he is the employee under Respondent No.4 and at present he is a Senior Accountant stationed at Guwahati.

2. That your humble applicant is a married one and has got wife and one daughter. Under the CCS(MA) Rules, 1944, the wife of the applicant is entitled for treatment.

3. That your humble applicant's wife is suffering from Osteopenia and at present she is under treatment of Indraprastha Apollo Hospital, New Delhi. Mention is to be made here that ~~xx~~ she was treated earlier twice in the Apollo Hospital, Chennai.

Contd.....

Bimalendu Gupta

4. That the applicant begs to state that as per advice of the Indraprastha Apollo Hospital, New Delhi the wife of the applicant Smt. Ajanta Gupta is to be hospitalised in the month of September, 2000 and accordingly your humble applicant approached the Respondent No.4 to sanction him air travel advance as well as medical advance enabling her to proceed to New Delhi with two escorts. Dr. Mukul Verma, Senior Consultant, Neurology, who is treating the applicant's wife certifies that Mrs. Ajanta Gupta is to avoid long distance by road or train and she should travel by air.

(16)

Health miny.
approved for
him & his wife

A copy of the said certificate
is enclosed herewith and same is
marked as Annexure A.1.

5. That your humble applicant begs to state that the Respondent No.6 i.e. Dy. Accountant General (Admn), O/o the AG(A&E), Assam by two orders, one dated 22.9.2000 and by another order dated 26.9.2000 has rejected the prayer of the applicant for air travel advance and advised him to submit a fresh proposal to travel by railways.

Copies of the above orders
dated 22.9.2000 and 26.9.2000 are
enclosed hereto and marked as
Annexure-A2 and Annexure-A3
respectively.

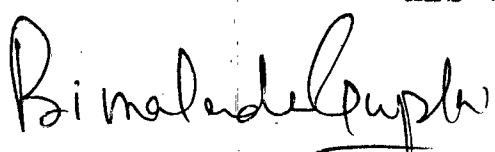
Contd.

Bimalendu Gupta

6. That your humble applicant begs to state that his wife was entitled to travel by air for medical treatment under the existing rules. But the respondents due to the reasons best known to them, refused it. As referred above while the applicant's wife was treated at Apollo Hospital, Chennai, the respondents refused to sanction air travel, action of which compelled the applicant to approach this Hon'ble Tribunal by an O.A. No.149/2000 which is still pending for disposal. In this O.A. passing an interim order on 5.5.2000 directed the respondents to allow for air travel advance and accordingly he availed of it. The contention of the respondents that the applicant is only entitled to get advance for railway journey is nullified by the Govt. order dated 25th July, 2000 under reference No.C.14012/14/2000-CGHS/D.I issued by addressed to Respondent No.37 and issued by respondent No.5. The interim order dated 5.5.2000 and copy of the govt. order referred above are enclosed herewith and same are marked as Annexure-A4 and Annexure-A5.

7. That your humble applicant begs to state that his wife is to be immediately hospitalised at Indraprastha Apollo Hospital, New Delhi and she can only travel by air as the patient of Osteopenia.

8. That your humble applicant begs to state that refusing to sanction advance for air travel has resulted miscarriage of justice and has deprived the applicant of his valuable right guaranteed to him.



Contd.....

GROUND FOR RELIEF WITH LEGAL PROVISION :

1. For that the impugned orders appearing in Annexures A.2 and A.3 are violative of CCS(MA) Rules, 1944, unconstitutional and contrary to the decision of the Respondent No.1.

Health min. 2. For that the impugned orders are liable to be set aside and quashed in view of Annexure-A.5 approving air travel journey of the applicant's wife for treatment.

*11.9.2007
Apollo Hosp.
recommended
travel with
two attendants*
3. For that both the impugned orders are not tenable on law and same are liable to be set aside and quashed.

4. For that both the impugned orders are passed without any application of mind and same are liable to be set aside and quashed.

5. For that by both the orders, respondents have exceeded their jurisdiction and hence both are to be declared illegal only on the point of jurisdiction.

6. For that the applicant is entitled to get advance for air travel, refusal of which has resulted miscarriage of justice.

7. For that it is a fit case where this Hon'ble Tribunal can intervene in the interest of justice.

Bimalakishore Gupta

Contd.....

6. DETAILS OF REMEDIES EXHAUSTED :

The applicant declares that he has no other alternative or efficacious remedy except by way of filing this application before this Hon'ble Tribunal.

7. MATTER NOT PREVIOUSLY FILED OR PENDING BEFORE ANY COURT/TRIBUNAL :

The applicant further declare that he has not filed any application, Writ Petition or Suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEF(S) SOUGHT FOR :

Under the facts and circumstances stated above the applicant most respectfully pray that the Hon'ble Tribunal may be pleased to grant the following relief(s) to the applicant.

8.1 To direct the respondents particularly respondent No.4 to pay immediately ^{W/Medical} ~~the advance for~~ air travel for medical treatment of applicant's wife Mrs Ajanta Gupta at Indraprastha Apollo Hospital, New Delhi, holding Annexures A2 and A3 ~~xxx~~ illegal.

8.2 Any other relief/reliefs as this Hon'ble Tribunal considers fit and proper.

Bimalendu Gupta

Contd....

9. INTERIM RELIEF IF ANY SOUGHT FOR :

9.1 Under the facts and circumstances stated above the applicant prays to stay the Annexures A.2 and A.3.

9.2 To pay immediately the advance for air travel as well as medical advance as the applicant's wife is in a deteriorating condition.

, Rs. 38,520/-

Rs. 60,000/-

10. The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O.

(i) IPO No.

(ii) Date of Issue : 502 956

(iii) Issued from : 29-9-2002

(iv) Payable at :

12. LIST OF ENCLOSURES :

As stated in the INDEX.

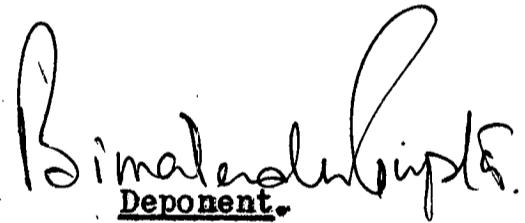
Ramchandra Upadhyay

Verification

VERIFICATION

I, Shri Bimalendu Gupta, son of late Biswanath Gupta, aged about 44 years, presently working as Senior Accountant in the Office of the Accountant General(A&E), Assam, Moidamgaon, Beltola, Guwahati-781029 do hereby verify that the contents made from paragraph 1, 2, 3 + 4 6(1st part), 7 are true to my knowledge and those made in paragraphs are derived from records which I believe to be true and those made in paragraphs 5, 6(2nd part) of the application are true to my legal advice and rest are humble submissions before this Hon'ble Tribunal. I have not suppressed any material facts in this case.

AND I sign this Verification on this 29th day of September, 2000 at Guwahati.


Bimalendu Gupta
Deponent.



11 September 2000

TO WHOM IT MAY CONCERN

Re : Mrs Ajanta Gupta, Hospital ID No. M0029221

This is to state that Mrs Ajanta Gupta is suffering from ? Osteopenia and is required to come to this hospital for investigations and review.

An amount of approximately Rs.60,000/- (Rupees Sixty Thousand only) would be needed for the investigations and hospital stay. She is also advised to avoid long distance travel by road or train ; it is preferable that she travels by air along with two escorts.

Laji Chaudhary

• fn

DR MUKUL VERMA
 Senior Consultant - Neurology

WORLD CLASS HEALTHCARE

Address : Sarita Vihar, Delhi-Mathura Road, New Delhi-110044. Ph. : 6925858, 6925801 Fax : 91-11-6823629.

PHONE NO. : 011-6823629
 SEP. 12, 2000 4:11PM IP 1

FROM : APOLLO HOSP. DELHI

Annexure - A-2

OFFICE OF THE ACCOUNTANT GENERAL (A & E), ASSAM,
MAIDAMGAON :: BELTOLA :: GUWAHATI - 29.

Admn-II/BG-MDL/2000-01/505

Date : 22.09.2000

With reference to his Advance T.A. proposal for Air fare, received at 3.00 p.m. on 22.09.2000. Shri Bimalendu Gupta, Sr. Acctt. is hereby asked to submit a fresh Advance T.A. proposal for entitled Railway class as the treating physician of his wife at Indraprastha Apollo Hospital, New Delhi has categorically stated that Air travel is not essential, when a clarification was sought for on the certificate dt. 11.09.2000 obtained by Shri Gupta from Dr. Mukul Verma, Sr. Consultant, Neurology ~~MR~~ of Indraprastha Apollo Hospital, New Delhi. As such grant of T.A. Advance for Air fare proposed by Shri Gupta could not be entertained in terms of rule position of CS(MA) Rules 1944.

Further, he is asked to specify the tentative date of his outward journey from Guwahati to New Delhi, in connection with the review treatment of his wife, so that despatch of the Bank Draft drawn for Rs.48,000/- (80% of Rs. 60,000/- as per estimate submitted by him) in favour of Indraprastha Apollo Hospital, being the Medical Advance required for the purpose, may be made accordingly.

Also he should intimate this office whether he has already deposited the un-utilised amount of Rs. 19,742/- to the Govt. A/c as directed vide this office letter Dtd. 13.09.2000, otherwise the said amount will be recovered from his monthly salary in 4 equal instalments.


Shri Bimalendu Gupta, Sr. Acctt. Deputy Accountant General (A)
Record(C) Section
Office of the A.G.(A&E), Assam,
Guwahati - 29.

असम अधिकारी (डॉ. एवं डॉ.)
Deputy Accountant General (A&E)
असम, गुवाहाटी -
Assam, Guwahati

12
Annexure - A-3.

OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM,
MAIDAMGAON, BELTOLA, GUWAHATI - 781 029.

ADMN II/BG-MDL/PT.II/2000-2001/529

26 September 2000

With reference to his representation dated 25th and 26th September, 2000, Shri Bimalendu Gupta, Sr. Accountant is hereby asked to refer to this office letter No. Admn II/BG-MDL/2000-01/505 dated 22.9.2000 regarding grant of Medical Advance and TA Advance to him and to expedite submission of fresh TA proposal for entitled Railway class.

Non compliance will lead to initiation of disciplinary action as the official is habitually resorting to antisstantamount to by-passing of proper official procedures and violation of official code and conduct.

Shri Bimalendu Gupta, Sr. Accountant
Record Section (Local)

X. Siddhartha Singh
Deputy Accountant General (Admn)
Oy. Accountant General (Admn.)
মহালেবাকার ফা কার্যালয় (লে.এব' হু.)
I/O the Accountant General (A&E)
অসম, গুৱাহাটী
Assam. Guwahati

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO. 159/2000

OF 199

Applicant(s)

Bissoa Deodas Gupta.

Respondent(s)

Union of India and others.

Advocate for Applicant(s)

Mr. G. Sarmee.

Mr. G. Sareen.

Advocate for Respondent(s)

C. G. S. L.



Notes of the Registry	Date	Order of the Tribunal
40	25.5.00	<p>Learned counsel Mr. G. Sarma for the applicant and Mr. B.C. Pathak, learned Addl. C.G.S.C. for the respondents.</p> <p>Learned counsel for the applicant submits that as per direction of the Tribunal dated 25.4.00 the respondents have disposed of the representation of the applicant vide order dated 28.4.2000 (Photocopy of which has been produced before me today). The learned counsel for the applicant submits that the case of the applicant has not been examined by the concerned authority in the right perspective and have rejected the claim of the applicant by strictly following the rules and showing disregard to the immediate requirement of the treatment to save human life. He further submits that the applicant is a permanent employee of the department and is not a stranger. Consequently, if by bypassing the rules some money is granted to the applicant for emergent treatment of his wife even then the Government is not estopped from enquiring into the matter subsequently, after treatment. Therefore, the respondents be directed to release the amount for treatment of the applicant's wife including money necessary for her travel by air to Chennai alongwith two escorts for her assistance as per the requirement of her ailment. Opposing the submission of the learned counsel for the applicant, the learned Standing Counsel submits that while examining the case of the applicant for grant of advance as per the direction, the</p>
		7

Registry	Date	Order of the Tribunal
	5.5.00	<p>department was duty bound, to keep in consideration the relevant rules and after such consideration the order has been communicated to the applicant which is as per the rules. He further argues that the requirement of rule of furnishing essentiality certificate of treating Doctor of a Government Hospital or Central Government Health Scheme was necessarily required to be submitted by the applicant to claim the money for treatment and for air travel. But, the applicant has not submitted any such certificate and all what he has submitted is a certificate of a private Doctor and a certificate of a Doctor of Medical College and Hospital that the patient is fit to travel by air. Both these certificates are not sufficient to infer that the patient (wife, of the applicant) is in a critical condition so as to need immediate shifting to Chennai for emergent treatment. In his submission the applicant is not entitled to advance for air travel.</p> <p>I have considered the rival submissions. At this stage I would not like to go into the merits of the case. No doubt, presently the record is <u>not complete in respect of essentiality certificate of the Doctor for allowing the patient to travel by air</u>, but if all what the applicant says is correct then we can infer that human life is in danger. The applicant being in permanent employment under the respondents, the welfare of his family members is also to be looked into and considered in the right perspective by</p> <p style="text-align: center;">2 8/11</p>

Notes of the Registry

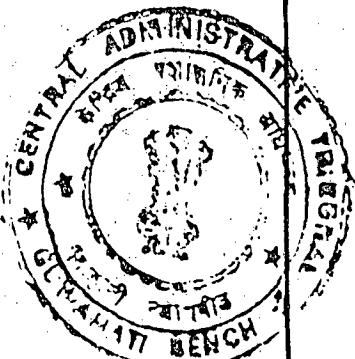
Date

Order of the Tribunal

42

5.5.00

the department in which the applicant is presently serving. At this stage I would not like to go into the merits of the case regarding essentiality certificate, and need of the applicant to take his wife by air to Chennai, for treatment because any debate on this point might be causing prejudice to the case which could be argued at length at the appropriate time. Considering the urgency in the matter and in order to save human life, not strictly following the compliance of the rules, I would like to direct the department to grant the applicant Rs.30,000/- for treatment of his wife and money appropriate to allow him to travel with his wife by plane from Guwahati to Chennai and back and the question of entitlement of the applicant's travel by air could be looked into subsequently. As per the submission of the learned counsel for the applicant, it may be observed that in case the applicant is not able to satisfy the Court regarding his claim as per Rules, he would refund the money with interest. We may consider that this submission is made keeping in view the bonafide immediate necessity of treatment of the applicant's wife. Further, it may be observed that the applicant being in permanent Government employment with the respondents, the money could always be recovered from him if he is subsequently found not entitled to the same. One thing which should be kept in mind is that the applicant as per his status in the department and looking to his pay scale is entitled to travel by appropriate



Notes of the Registry	Date	Order of the Tribunal
	5.5.00	<p>Compliance of the order should be done within a period of seven days.</p> <p>List the case for written statement and further orders on 7.6.00.</p> <p>Copy of this order be delivered to the learned counsel for the parties for necessary compliance.</p>

Sd/ MEMBER(J)

Memo. No. 1334

Date

Copy for information and necessary action to:

1. The Accountant General (A&E) Assam, Moidangson, Daltola, Guwahati.
2. Mr. B.C. Pathak, Addl. C.G.S.C. Central Administrative Tribunal, Guwahati Bench, Guwahati - 5.
3. Mr. G. Sharma, Advocate, Central Administrative Tribunal, Guwahati Bench, Guwahati - 5.

SECTION OFFICER (J)

Form No. 95/52/00

2/1

MOST IMMEDIATE
COURT CASE

NO. C.11012/14/2000-OGHS/D.I
Directorate General of Health Services

Nirman Bhawan, New Delhi

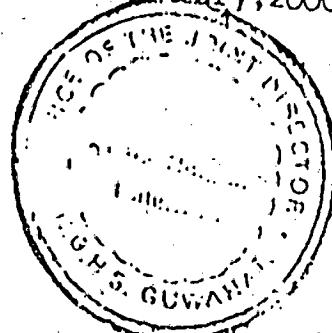
dated the 25th July, 2000

To

✓ The Joint Director,
CGHS, Anandakuteer, Path, Zoo,
Narangitenale, R.G. Barwa Road,
Guwahati-781 003.

Sub:-O.A.No.149/2000, CAT Guwahati Bench Sh. Bimalendu Gupta
v/s Union of India and others.

Sir,



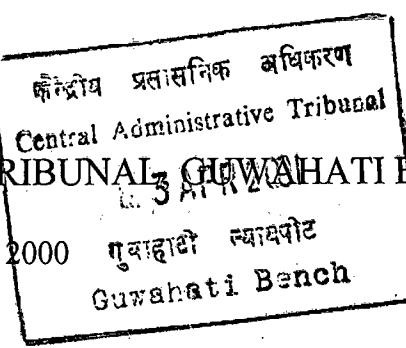
Please refer to your letter No.C.18018/1/97-98/832
dated 16th June, 2000 on the above subject. I am to convey
the approval of the Govt. to the air travel by Sh. Bimalendu
Gupta alongwith his wife Smt. Ajanta Gupta to and fro Guwahati-
Chennai for the follow-up treatment of his wife.

2. This issues with the approval of JS(MA) vide Dy.
No.94-Court Case dated 14.7.2000.

Yours faithfully,

✓ N.D.U/WU/25/7/2000
(DR(MRS) L. N. N. G. P. I. U. R.)
ADM. DEPUTY DIRECTOR GENERAL (HQ)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH



Shri Bimalendu Gupta
Vs
Union of India and others

IN THE MATTER OF

A written statement submitted by the respondents

The humble respondents beg to submit the written statement as follows:

1. That with regard to paras 1,2 and 3.1, 3.2 and 3.3 the respondents beg to offer no comment.

That with regard to para 3.4 the respondents beg to state that, it is not true that, as per advice of the Indraprastha Apollo Hospital, New Delhi the wife of the applicant is to be hospitalised. It appears from Annexure-A-1 of the O.A that his wife is required to go to hospital for investigation and review and not for hospitalisation. It is true that, the doctor advised "to avoid long distance travel by road or train, it is preferable that she travels by air along with two escorts" (annexure-A-I of the O.A.)

3. That with regard to para 3.5 the respondents beg to say that the applicant and any of his dependents family members are entitled to travel by Air if the Government is satisfied that Air Travel is absolutely essential and that travel by any other means i.e. by rail or road etc. will definitely endanger the life of the patient or involves a risk of serious aggravation of his/her condition vide Rules regarding Travelling Allowance for Medical Attendance and/or Treatment.

Copy of the Rule is annexed hereto and marked as ANNEXURE-R-I.

It is pertinent to mention here that, the Sr. Accounts Officer(Admn), o/o the A.G.(A&E), Assam wrote a letter to the treating physician of the applicant's wife at Indraprastha Apollo Hospital, New Delhi to ascertain whether Air travel is essential for the wife of the applicant in view of the doctor's advice dated 11.9.2000(annexure-A-I of the

W

O.A.). The treating physician of his wife has categorically stated that Air travel is not essential vide fax dated 18.9.2000. As such grant of T.A. Advance for Air fare claimed by the applicant could not be entertained in terms of rule of CS(MA) Rules, 1944.

Copy of fax dated 18.9.2000 is annexed hereto and marked as ANNEXURE-R-II

It is also pertinent to state that, for outward journey from Guwahati to New Delhi only the local physician i.e. doctor of concerned department of Guwahati Medical College Hospital, Guwahati can only decide the essentiality of Air travel. Dr. Mukul Verma had issued the certificate without examining the present condition of the patient, while the patient is at Guwahati and hence a clarification was sought for from Dr. Mukul Verma regarding essentiality certificate.

4. That with regard to para 3.6 the respondents beg to state that, as the applicant could not produce certificate that Air Travel is absolutely essential for his wife under special provision, so Air fare could not be sanctioned to him. Govt. order dated 25.7.2000 under reference No.C.14012/14/2000 - CGHS/D.1(annexure-A-5 of the O.A.) was issued in compliance of the Hon'ble Tribunal's interim order dt.5.5.2000 passed in O.A.149/2000 (annexure-A-4 of the O.A.). The Govt. order dated 25.7.2000 does not nullify the Rules (annexure-R-I) and annexure-A-5(a). *(25/7/2000 D.G.T Health Services letter No. C.14012/14/2000 - CGHS/D.1. dated 28.9.2000 (ANNEXURE - R-II))*

5. That with regard to para 3.7 the respondents beg to state that according to advice of the physician of the applicants' wife (annexure-A-2 of the O.A.) ~~she~~ is required to go to Delhi for investigations and review and not for hospitalisation as claimed by the applicant. All along she was treated in Out-patient Department so far as the records/Medical claims etc. received from the applicant by the office of the respondents and was never in need of immediate hospitalisation.

6. That with regard to para 3.8 the respondents beg to state that, as the applicant did not produce the required certificate, so he could not be given advance for Air ticket. But the respondents are always ready to give him Medical Advance and T.A. advance for entitled Railway class (annexure-A-2 and A-3 of the O.A.)

In view of the statements made above, the grounds stated in the O.A. are not tenable and the O.A. is liable to be rejected.

7. That with regard to Para 6 and 7, the respondents beg to offer no comments.

8. That with regard to para 8 and 9 the respondents beg to state that the applicant was twice asked to specify tentative date of journey and to submit estimate for Medical advance and also for T.A. advance for entitled Railway class.

In the premises aforesaid, it is therefore prayed that your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records, shall further be pleased to dismiss the application with cost.

VERIFICATION

I, Shri HOVEYDA APPAS being authorised do hereby solemnly affirm and declare that, the statements made in paras 2,4,5 and 6 are true to my knowledge and the statement made in para 3 are true to my information and I have not suppressed any material fact.

And I sign this verification on this 3rd day of April, 2001.

Hoveyda Appas
 अप महालेखाकार (प्र०)
 Declarant
 Dy. Accountant General (Admn.)
 महालेखाकार का कार्यालय (ल०एवं ह०)
 O/O the Accountant General (A&F)
 असम, गुवाहाटी
 Assam. Guwahati

~~ANNEXURE~~ (4) ANNEXURE
A-R-I

APPENDIX VII

**TRAVELLING ALLOWANCE FOR MEDICAL
ATTENDANCE AND/OR TREATMENT**

1. General Instructions

The question of rationalization of the admissibility of travelling allowance under the Central Service (Medical Attendance) Rules, 1944 and the Central Government Health Scheme, had been under consideration of the Government of India. It has been decided in supersession of all previous orders and the provisions made in the Supplementary Rules or orders issued thereunder that Central Government servants and members of their families will be entitled to travelling allowance at the rates and under the conditions specified below for journeys undertaken by them to obtain appropriate medical attendance and treatment to which they are entitled under the aforesaid rules and orders issued hereunder—

1. Journey by rail/road/sea/air

The patient (whether Government servant or a member of his family dependent on him) and also his attendant (wherever recommended by the attending doctor) should be entitled to travelling allowance *plus* daily allowance for the period of journey undertaken by rail as per the entitled class or the lower class by which the journey is actually performed, road, sea (ship, steamer, etc.) and air (within the country) for obtaining appropriate medical attendance or treatment.

Special provision:—Government may consider refund of air fare paid in individual cases on merits, provided they are satisfied that air travel was absolutely essential and that travel by any other means, i.e., by rail or road, etc., would have definitely endangered the life of the patient or involved a risk of serious aggravation of his/her conditions.

INDRAAPRASTHA
APOLLO
HOSPITALS

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ANNEXURE - R-II

18 September 2000

Senior Accounts Officer (Admn)
 Office of the Accountant General (A&E) Assam
 Maidamgauon, Beltola -
 Guwahati 781 029
 Fax 0361 303142

Sir,

Ref : Your letter Admin 2/BG-MDL/IA/Part II/2000-2001/474 dated 14.09.2000
 Re : Mrs Ajanta Gope

In response to your above fax, I would like to clarify as follows :

1. The signatory of the certificate is an authorised signatory of the hospital, in her capacity as Manager - Inpatient Services. I was aware of it.
- 2 & 3. In view of the possibility of osteopenia, I have remarked that air travel and escorts will be preferred. I have not mentioned that this is essential. You may use your discretion.

Best regards,

Sincerely,

Mukul Varma
 DR MUKUL VARMA
 Senior Consultant - Neurology

WORLD CLASS HEALTHCARE

Address : Sarita Vihar, Delhi-Mathura Road, New Delhi-110044. Ph. : 6925858, 6925801 Fax : 91-11-6823629.

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MOST IMMEDIATE
COURT CASE
BY SPEED POST

NO. C.14012/14/2000-CGHS/D.I
Directorate General of Health Services

ANNEEXURE-R-III

Nirman Bhawan, New Delhi
dated the 28th Sept., 2000

To:

The Deputy Accountant General (Admn.)
Officer of the Accountant General (A&E) Assam
Majlisdaan Beldola
Guwahati-29

Sub:-Approval for grant of Air fare-etc in connection with
the following treatment of Smt. Ajanta Gupta wife of
Shri Bimalendu Gupta.

Sir,

Please refer to your letter No. Admn-II/BG-MIL/
TA/2000-01/437 dated 6.9.2000 on the above subject.

2. The case was examined in consultation with the
Ministry of Health and Family Welfare and you are requested
to take the following action as approved by the Ministry
of Health:-

- (i) Payment of amount of air travel to Shri Gupta
to and fro Guwahati-Chennai only as per the
Hon'ble CAT's Order instead of Guwahati-Chennai
New Delhi-Guwahati.
- (ii) Submission of specific certification of the
treating physician of Apollo Hospital, Chennai
to the effect that the "air travel for the
patient is absolutely necessary".

You are also requested to contact the CGHS Authorities
in Guwahati so that they could request the Standing Govt.
Counsel to keep in view the above two points while preparing
the draft written statement to be filed in the case before
the next date of hearing.

Yours faithfully,

M. Y. Ansari
(M. Y. ANSARI)
DEPUTY DIRECTOR ADMN (D.I)

OFFICE OF THE ACCOUNTANT GENERAL (A & E), ASSAM,
MAIDAMGAON :: BELTOLA :: GUWAHATI - 29.

Admn-II/BG-MDL/2000-01/505

Date : 22.09.2000

With reference to his Advance T.A. proposal for Air fare, received at 3.00 p.m. on 22.09.2000. Shri Bimalendu Gupta, Sr. Acctt.. is hereby asked to submit a fresh Advance T.A. proposal for entitled Railway class as the treating physician of his wife at Indraprastha Apollo Hospital, New Delhi has categorically stated that Air travel is not essential, when a Clarification was sought for on the certificate dt:-11.09.2000 obtained by Shri Gupta from Dr. Mukul Verma, Sr. Consultant, Neurology ~~Max~~ of Indraprastha Apollo Hospital, New Delhi. As such grant of T.A. Advance for Air fare proposed by Shri Gupta could not be entertained in terms of rule position of CS(MA) Rules 1944.

Further, he is asked to specify the tentative date of his outward journey from Guwahati to New Delhi, - in connection with the review treatment of his wife, so that despatch of the Bank Draft drawn for Rs.48,000/- (80% of Rs. 60,000/- as per estimate submitted by him) in favour of Indraprastha Apollo Hospital, being the Medical Advance required for the purpose, may be made accordingly.

Also he should intimate this office whether he has already deposited the un-utilised amount of Rs. 19,742/- to the Govt. A/c as directed vide this office letter Dtd. 13.09.2000, otherwise the said amount will be recovered from his monthly salary bill in 4 equal instalments.

Shri Bimalendu Gupta, Sr. Acctt. Deputy Accountant General (A)
Record(C) Section .
Office of the A.G.(A&E), Assam,
Guwahati - 29.

22/09/00
Deputy Accountant General (A&E)
Assam, Guwahati - 29.

OFFICE OF THE ACCOUNTANT GENERAL (A&E) ASSAM,
MAIDAMGAON, BELTOLA, GUWAHATI - 781 029.

ADMN II/BG-MDL/PT.II/2000-2001/529

26 September 2000

With reference to his representation dated 25th and 26th September, 2000, Shri Bimalendu Gupta, Sr. Accountant is hereby asked to refer to this office letter No. Admn II/BG-MDL/2000-01/505 dated 22.9.2000 regarding grant of Medical Advance and TA Advance to him and to expedite submission of fresh TA proposal for entitled Railway class.

Non compliance will lead to initiation of disciplinary action as the official is habitually resorting to antisettantamount to by-passing of proper official procedures and violation of official code and conduct.

X. S. Dolkarthe Singh

Deputy Accountant General (Admn)

Dy. Accountant General (Admn.)

মহারেণ্টান কা ফার্মিল (লে.এব' হু.)

Y/O the Accountant General (A&B)

অসম, গুৱাহাটী

Assam, Guwahati

Shri Bimalendu Gupta, Sr. Accountant
Record Section (Local)